



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201224043

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 20 2012

Uniform Issue List: 402.08-00, 403.05-00

T:EP:RA:T4

Legend:

Taxpayer A =

Plan X =

Account Y =

IRA Z =

Company D =

Amount A =

Amount E =

Date 1 =

Date 2 =

Date 3 =

Date 4

=

Dear :

This is in response to a letter dated May 11, 2010, supplemented by letters dated February 10, 2011, and August 3, 2011, submitted by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 76, represents that on Date 2 she received a distribution from Plan X totaling Amount A. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to an error by a representative of Company D.

On Date 1 Taxpayer A signed a Company D transfer of assets form to roll over the funds in Plan X into an IRA. However, on Date 2, funds from Plan X totaling Amount A were mistakenly deposited into Account Y, a nonqualified brokerage account. Taxpayer A did not become aware of the error until she received a Form 1099-DIV on Date 3, after the 60-day rollover period had expired. On Date 4 Amount E, a portion of Amount A, was rolled over into IRA Z.

Taxpayer A took all of the steps necessary to effect a timely rollover of Plan X and her failure to do so within the 60-day rollover period was due to an error made by a representative of Company D. Documentation from Company D acknowledges that an error was made by a representative of Company D.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (Service) waive the 60-day rollover requirement with respect to Amount E.

Section 403(a)(4) of the Code provides that if (i) any portion of the balance to the credit of an employee in an employee annuity described in section 403(a)(1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4), (ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and (iii) in the case of a distribution of property other than money, the amount so transferred consists of

the property distributed, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 403(a)(5) of the Code provides that the rules of section 402(c)(2) through (7) shall apply for the purposes of section 403(a)(4).

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9).

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402 (c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount E was due to an error by a representative of Company D.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the rollover of

Amount E. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, were met with respect to such contribution, the contribution of Amount E into IRA Z will be considered a valid rollover contribution within the meaning of section 402(c)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact ID #
Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: